

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

JUDGMENT

(C.I.T., Jodhpur. V/s. M/s. Modi Enterprises, Bikaner)
D.B. I. T. REFERENCE NO. 27/1998

Date of judgment : 19th September, 2007

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. K.K. Bissa, for the appellant.

BY THE COURT:- (PER HON'BLE RAJESH BALIA J.)

This is an application under Section 256 (2) of the Income Tax Act, 1961. The Tribunal has refused to state the case and refer the following issue claimed by the applicant to be question of law arising out of the appellate order of Income Tax Appellate Tribunal, Jaipur Bench Jaipur dated 28.02.1995 by rejecting the application moved before it under Section 256 (1) of the Act of 1961.

1. "Whether on the facts and in the circumstances of the case the ITAT is justified in holding that invoking the provisions of sec. 145, either under sub-section (1) or of Sub-section (2) is not justified?
2. Whether the defects in system of accounting as found by the AO and

accepted by the ITAT do not legally justify the application of provisions of sec. 145 of the I.T. Act?

3. Whether the ITAT is right in brushing aside the findings of the Id. CIT(A) pointing out specific defects in accounts, only on the ground of absurdity of application of n.p. Rate?
4. Whether the ITAT's legally justified in holding that the book results as declared by the assessee be accepted?
5. Whether on the facts and in the circumstances of the case the ITAT's finding is not perverse?"

The two appeals were before the Tribunal relating to assessment of the years 1988-89 and 1989-90. All the questions raised by the revenue relate to the controversy about the Assessing Officer having invoked Section 145 of the Act of 1961 for rejecting the books of accounts and making assessment on best judgment.

The Tribunal rejected the applications for reference under Section 256 (1) by holding that no referable question of law arise for consideration out of its Appellate order.

The facts of the case about which there is no dispute are that for assessment year 1988-1989 the assessee's

books of account had shown results at 4.08% gross profit rate and for assessment year 1989-1990 the gross profit rate reveals as per books of account at 4.06%. Likewise, in the business of supplies the net profit rate for assessment year 1988-1989 was manifested at 2.2% whereas, the consolidated net profit rate for assessment year 1988-1989 for both business came to be 1.9%.

The I.T.O. was of the opinion that the net profit rate disclosed for the two years was less than the net profit rate disclosed for assessment year 1987-1988. After issuing a show cause notice he rejected the explanation finding it not to be satisfactory and by invoking provisions of Section 145 rejected the books of account and resorted to the best judgment assessment.

The assessment orders are dated 30.03.1990, & 07.01.1991 respectively. The order of rejection of books of accounts was affirmed by the C.I.T. (Appeals) and assessment was enhanced for assessment year 1988-1989 and 1989-1990 by making additions apart from affirming the best judgment assessment made by A.O by increase in rate of profit.

The Tribunal has found that merely because the net profit rate revealed in the books of accounts for current year had been lower than the last year, without there being any finding about any defect in the books of accounts and without there being any finding that from the method of accounting employed by the Assessee it is not possible to deduce correct profit, the rejection of books of accounts was not proper and finding that there is no error in accounting, accepted the results shown by the books of accounts of the Assessee.

So far as the question no. 1 to 3 relating to the rejection of books of account are concerned, in our opinion the answer is self-evident from the Statutory provision hence they cannot be considered to be questions of law required to be referred to this court under Section 256. The order of Tribunal in this regard is not erroneous in rejecting the application under Section 256 (1). Section 145 of the Act of 1961 as existing at the relevant time when assessment order was framed reads as under:-

"145, Method of accounting.- (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee:

Provided that in any case where the accounts are correct and complete to the satisfaction of the Assessing Officer but the method employed is such that, in the opinion of the Assessing Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Assessing Officer may determine:

Provided further that where no method of accounting is regularly employed by the assessee, any income by way of interest on securities shall be chargeable to tax as the income of the previous year in which such interest is due to the assessee:

Provided also that nothing contained in this sub-section shall preclude an assessee from being charged to income-tax in respect of any interest on securities received by him in a previous year if such interest had not been charged to income-tax for any earlier previous year:

(2) Where the Assessing Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144'."

A perusal of the aforesaid provisions in juxta position with the order of Assessing Officer goes to show that neither of condition envisaged under sub-section (1) or sub-section (2) are fulfilled even according to the order of the Assessing Officer. The Assessing Officer has not found that accounts of the assessee to be incorrect or incomplete. He has not found that in his opinion income cannot be properly deduced there from. He has also not

found that no method of accounting is regularly employed by the Assessee so as to invoke proviso to sub-section (1). Likewise, in terms of sub-section (2) the Assessing Officer could reject the books of accounts and resort to the best assessment only if he is not satisfied about correctness and the completeness of the books of accounts which is also not the finding.

In the absence of any such finding/satisfaction the Assessing Officer could not have invoked jurisdiction to reject the books of accounts and resort to best judgment assessment.

The answer being obvious from the perusal of the provision alongwith order of assessing officer the Tribunal was justified in holding that no referable question of law arise from its order. The said order in our opinion is not erroneous.

So far as the question no. 4 & 5 are concerned which relate to the acceptance of the results of the books of accounts by the Tribunal it is also a finding of fact and does not call for reference as a question of law. It is not necessary that in all cases where the books of accounts

are not found to be incorrect or irregular still some addition had to be made.

Accordingly, on that count also no error is found in the order of Tribunal.

As a result, the application under Section 256 (2) fails and is hereby rejected.

No costs.

(SANGEET LODHA), J.

(RAJESH BALIA), J.

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